In the Matter of Merchant Mariner's Document No. Z-664908
Issued to: RAYMOND FRILOT

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

742

RAYMOND FRILOT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 4 December, 1953, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-664908 issued to Raymond Frilot upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as galley utilityman on board the American SS ANTIGUA under authority of the document above described, on or about 26 August, 1952, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had in his possession certain narcotics; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of four employees of the United States Customs.

In defense, Appellant testified under oath in his own behalf. He stated that since the Customs Searching Squad was on board when he returned to the ship, he asked them to search his locker; after his locker and baggage had been searched, he took off his sport shirt and hung it on the outside of his locker; and he returned for his sport shirt and baggage sometime later after he had been paid off and was ready to leave the ship. Appellant also testified that he did not know the package was in his pocket.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-664908 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged:

POINT I. That the Government failed to preclude every reasonable hypothesis of innocence in finding the charge and specification of misconduct proved. There is not a scintilla of evidence to show that Appellant had knowledge of his physical possession of the marijuana and he consistently denied any such knowledge. This denial is corroborated by the circumstances that others had access to the sport shirt while it was hanging on Appellant's locker and it is improbable that a man would attempt to smuggle contraband in a part of his clothing which he knew would be searched. This raises a reasonable explanation and an indication of innocence.

POINT II. That the testimony of Appellant, to the effect that he had removed his sport shirt, is corroborated by the stipulated testimony of two members of the crew who were not available to testify and this testimony was not denied by the witnesses for the Government. The ethereal theory of knowledge, on the part of Appellant, is not corroborated by the evidence.

POINT III. That the burden of proof was placed upon the Appellant rather than on the Government, contrary to all the laws of the United States concerning rules of evidence. Since the Government did not prove that Appellant had knowledge of his actual physical possession of narcotics, Appellant was deprived of his property (the right to earn a living at sea) without due process of law when the burden of proof was shifted to Appellant to prove his innocence. In addition Appellant met this burden by showing a complete lack of knowledge on his part.

In conclusion, it is urged that the decision should be reversed and Appellant's document returned to him.

APPEARANCES: The firm of Horton and Horton of New Orleans, Louisiana, by Dorothy T. Horton, of Counsel.

Based upon my examination of the record submitted, I hereby make the following.

FINDINGS OF FACT

On 26 August, 1952, Appellant was serving as galley utilityman on board the American SS ANTIGUA and acting under authority of his Merchant Mariner's Document No. Z-664908 while the ship was docked at New Orleans, Louisiana, after completion of a voyage.

At about 1500 on this date, Appellant returned to his forecastle on board the ship and put on his sport shirt which had been hanging on the outside of his locker since approximately 1330 when Appellant had returned to the ship to be paid off. Appellant then left the ship.

Port Patrol Officer Harper was stationed at the gangway. He searched Appellant and his

baggage as he left the ship. Officer Harper looked in the right breast pocket of the sport shirt which Appellant was wearing and found a flat package about two inches square which was compactly in a piece of green paper and a piece of brown paper on the outside of the green paper. Officer Harper opened the package and inspected that the vegetable matter inside was marijuana. When shown the contents of the package and questioned about it, Appellant said that he did not know what it was or how it got in his pocket. Subsequent analysis disclosed that the contents of the package consisted of sixteen grains of marijuana.

OPINION

Appellant does not contest evidence that the package of marijuana was found in a pocket of the sport shirt which he was wearing. In the absence of an explanation which was satisfactory to the Examiner, this was sufficient evidence to conclude that Appellant knew that he had physical possession of the package and that he knew it contained marijuana. In Ng Choy Fong V. U.S. (C.C.A.9, 1917), 245 Fed. 305, the jury were told, in effect, that the proof of possession of a narcotic was enough to authorize conviction unless the defendant went forward with evidence which accounted for such possession. The court held that this was not a denial of due process of law.

Appellant herein has attempted to meet this burden by denying that he had any knowledge concerning the package of marijuana. The weight to be attached to the denial of a defendant, under circumstances where his knowledge of the presence of the narcotic in his possession is material, is for the jury to determine. Gee Woe V. U.S. (C.C.A.5, 1918), 250 Fed. 428, cert den. 248 U.S. 562. In the case of findings by an administrative agency, the rule is the same as in the jury; and the Examiner rejected Appellant's denial of knowledge.

The fact that Appellant left his sport shirt hanging on his locker for about an hour and a half does not rebut the conclusive evidence that the marijuana was found in Appellant's shirt. The most reasonable inference to be drawn from these two facts is that Appellant had knowledge of the presence of this package and its contents. This constitutes substantial evidence and placed the burden upon Appellant to refute the prima facie case made out against him. It is necessary in these proceedings to preclude every reasonable hypothesis of innocence as Appellant contends. The most probable of several reasonable inferences is sufficient to meet the requirement of substantial evidence.

In view of the strict policy of the Coast Guard to revoke the documents of all seamen found guilty of narcotics offenses, the order will be sustained.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 4 December 1953, is AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 27th day of May, 1954.